

RED CROSS

NOVEMBER 15 (legislative day, NOVEMBER 12), 1943.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 469]

The Senate Committee on the Judiciary, to whom was referred the bill (S. 469) to implement article 28 of the convention signed at Geneva on July 27, 1929, relating to the use of the emblem and name of the Red Cross, having carefully considered the same, report favorably thereon with the following amendments and with the recommendation that the bill, as amended, do pass:

Page 2, line 5, after the period strike out down to and including the word "words" in line 16 and insert in lieu thereof the following:

The American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States shall have the sole and exclusive right to use, within the territory of the United States of America and its exterior possessions, the emblem of the Greek Red Cross on a white ground, and the words "Red Cross" or "Geneva Cross." It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States for any charitable purpose, or for any person, corporation, or association for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business purpose, to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or the words "Red Cross" or "Geneva Cross", or any combination of these words.

Page 3, line 4, strike out "1944" and insert "1947".

Page 3, line 8, strike out "1944" and insert "1947". In the same line strike out the figures "1947" and insert "1950".

Page 3, line 25, strike out "1947" and insert "1950".

Page 4, line 2, strike out "1944" and insert "1947".

Legislation of this character was suggested for the consideration of the Congress in a message of the President of the United States dated April 3, 1942, and was designed the more effectively to carry

out the obligations of the United States under the Red Cross Convention of 1929 by which it was agreed that—

The Government of the High Contracting Parties whose legislation may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times:

(a) To prevent the use by private persons or by societies other than those upon which this Convention confers the right thereto, of the emblem or of the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes;

(b) By reason of the homage rendered to Switzerland as a result of the adoption of the inverted Federal colors, to prevent the use, by private persons or by organizations, of the arms of the Swiss Confederation or of signs constituting an imitation thereof, whether as trade-marks, commercial labels, or portions thereof, or in any way contrary to commercial ethics, or under conditions wounding Swiss national pride.

The prohibition mentioned in subparagraph (a) of the use of signs or designations constituting an imitation of the emblem or designation of the Red Cross or Geneva Cross, as well as the prohibition mentioned in subparagraph (b) of the use of the arms of the Swiss Confederation or signs constituting an imitation thereof, shall take effect from the time set in each act of legislation and at the latest 5 years after this convention goes into effect. After such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions.

In January 1905, after the American National Red Cross had been reincorporated by an act of Congress, commercial exploitation of the Red Cross emblem was prohibited by Federal statute, but this law operated only as to persons and corporations which at that time were not "lawfully entitled to use the sign of the Red Cross."

With the steady growth of the American Red Cross Society, both as to membership and as to its activities, the significance of the symbol as the sign of international work for the relief of the wounded and the suffering both in time of war and in time of peace became constantly better and better known. The charitable efforts of the people of the United States through the American Red Cross Society and of the people of other nations through similar societies gave the symbol and the words a special meaning, and as the work of the Red Cross Society increased, a tendency developed for the expansion of commercial use far beyond that which was not disturbed by the act of January 5, 1905.

It was the opinion of the committee, after long hearings and much consideration, that legislation should be enacted to implement the treaty and to provide eventually that the use of the symbol and the words should be limited rigidly to the American Red Cross Society.

It was recognized, however, that there have been good faith uses of the symbol. The bill as reported to the Senate, therefore, gives an opportunity for commercial users gradually to abandon the use by providing: First, that those who were lawfully entitled to the use of the Red Cross prior to the act of January 5, 1905, for commercial purposes might continue such use until July 1, 1947; second, that during an additional period of 3 years, namely, to July 1, 1950, the words or the symbol could be used in advertising and labeling if the use was lawful prior to the date of the enactment of the act, if a new trade name, design, or insignia, is used in the labeling and if such use is "only of the words 'Red Cross' and only for the purpose of indicating, in lettering smaller than the new trade name, design, or insignia, that such article formerly was identified by the Red Cross"; and that retailers may be permitted to deal in articles in the labeling

of which the Red Cross is used until July 1, 1950. In other words, the bill provides, in effect, first, 3 years' continued use of the symbol by manufacturers; second, 3 years' additional in which to change to a new insignia, and, third, 3 years after 1947 for retailers to dispose of stocks.

The committee is of the opinion that the international character of the work of the Red Cross Society, its great importance in the alleviation of the sufferings of soldiers and sailors in war, and the universal support which the American Red Cross Society receives from the people of the United States, justify an act of Congress making the symbol the exclusive property of the American Red Cross Society. This is particularly true since the Nation has voluntarily assumed a treaty obligation to this effect.

It may be pointed out that the law of trade-marks was a direct development of the law against unfair competition. The courts recognized the right of a commercial user who had established a reputation and goodwill in his business under a particular trade-mark to the exclusive use of that trade-mark in the specific area of his trade, and this protection was granted solely for the purpose of protecting such a user against the unfair competition of another user who sought to capitalize upon his commercial reputation. It was also designed to protect the public against deception. It has been said by the courts that there is no property right in a trade-mark as such, but only a right to be protected against the unfair and deceptive use of a trade-mark by another commercial user.

For example, it was said by Mr. Justice Pitney in *Hanover Milling Co. v. Metcalf* (240 U. S. 403, 413, 414):

Common-law trade-marks, and the right to their exclusive use, are of course to be classed among property rights (*Trade-mark cases*, 100 U. S. 82, 92, 93); but only in the sense that a man's right to the continued enjoyment of his trade reputation and the goodwill that flows from it, free from unwarranted interference by others, is a property right, for the protection of which a trade-mark is an instrumentality. As was said in the same case (p. 94), the right grows out of use, not mere adoption. In the English courts it often has been said that there is no property whatever in a trade-mark, as such. (Per *Ld. Langdale, M. R.*, in *Perry v. Truefitt* (6 Beav. 73); per Vice Chancellor Sir Wm. Page Wood (afterward *Ld. Hatherly*), in *Collins Co. v. Brown* (3 Kay & J. 423, 426; 3 Jur. N. S. 930); per *Ld. Herschell* in *Reddaway v. Banham* (A. C. 1896, 199, 209)). But since in the same cases the courts recognized the right of the party to the exclusive use of marks adopted to indicate goods of his manufacture, upon the ground that "A man is not to sell his own goods under the pretense that they are the goods of another man; he cannot be permitted to practice such a deception, nor to use the means which contribute to that end. He cannot, therefore, be allowed to use names, marks, letters, or other indicia, by which he may induce purchasers to believe, that the goods which he is selling are the manufacture of another person" (6 Beav. 73); it is plain that in denying the right of property in a trade-mark it was intended only to deny such property right except as appurtenant to an established business or trade in connection with which the mark is used.

Later in the case of *United Drug Co. v. Rectanus* (248 U. S. 90, 97) Mr. Justice Pitney wrote as follows:

The asserted doctrine is based upon the fundamental error of supposing that a trade-mark is a right in gross or at large, like a statutory copyright or a patent for an invention, to either of which, in truth, it has little or no analogy. *Canal Co. v. Clark* (13 Wall. 311, 322); *McLean v. Fleming* (96 U. S. 245, 254). There is no such thing as property in a trade-mark except as a right appurtenant to an established business or trade in connection with which the mark is employed. The law of trade-marks is but a part of the broader law of unfair competition; the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the product of a particular trade and to

protect his goodwill against the sale of another's product as his; and it is not the subject of property except in connection with an existing business.

In *Prestonettes v. Coty* (264 U. S. 359, 368) Mr. Justice Holmes said:

A trade-mark only gives the right to prohibit the use of it so far as to protect the owner's goodwill against the sale of another's product as his.

It was the judgment of the committee that the protection of the public against possible deception into the belief that commodities which were being placed on the market by commercial operators were in fact the product of the American Red Cross Society or endorsed by the American Red Cross Society would warrant the passage of this legislation even if there were no treaty obligations at all.

The message from the President of the United States transmitting a report from the Acting Secretary of State with an accompanying draft bill, designed the more effectively to carry out our obligations under the Red Cross Convention of 1929 is hereinbelow set forth in full and made a part of this report:

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING A REPORT FROM THE ACTING SECRETARY OF STATE WITH AN ACCOMPANYING DRAFT BILL, DESIGNED THE MORE EFFECTIVELY TO CARRY OUT OUR OBLIGATIONS UNDER THE RED CROSS CONVENTION OF 1929

To the Congress of the United States of America:

I am transmitting for the consideration of the Congress the enclosed report from the Acting Secretary of State, with an accompanying draft bill, designed the more effectively to carry out our obligations under the Red Cross Convention of 1929.

I commend the report and the proposed legislation to the favorable consideration of the Congress.

FRANKLIN D. ROOSEVELT.

(Enclosures: (1) Report; (2) draft bill.)

THE WHITE HOUSE, April 3, 1942.

The PRESIDENT:

The protection of the emblem of the Red Cross and the words "Red Cross" and "Geneva Cross," which was important in times of peace, is even more important now that we are at war, and makes it necessary to take steps to prevent their use for commercial purposes.

The Red Cross was given its distinctive name and emblem by the convention of 1864. The United States became a party to that convention in 1882. The first American National Association of the Red Cross was formed in Washington in 1881. From the beginning it was contemplated that the distinctive name and emblem should be used only by governments, through their medical, sanitary, and relief services, and by the national societies to be formed in the different countries. Unfortunately, our legislation has never been entirely adequate to protect either the name or emblem against commercial exploitation.

It was not until January 5, 1905, when the American National Red Cross was reincorporated by act of Congress, that commercial exploitation was prohibited by Federal statute; and the prohibition enacted was effective only as to persons or corporations not then "lawfully entitled to use the sign of the Red Cross." Two years later, in 1907, on becoming a party to the revised Red Cross convention of 1906, the United States assumed an express obligation under the convention to prohibit all commercial exploitation. Notwithstanding the obligation thus freely assumed, the act of June 23, 1910, contains a clause providing that "no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this act to continue the use thereof for the same purpose and for the same class of goods."

The obligation assumed under the 1906 convention was amplified and reaffirmed in the Red Cross convention of 1929, to which the United States became a party

in 1932, but nothing has been done with respect to amending the acts of 1905 and 1910 so as to carry out the obligation contained in chapter VIII, article 28, of that convention which provides:

"The Governments of the High Contracting Parties whose legislation may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times:

"(a) To prevent the use by private persons or by societies other than those upon which this Convention confers the right thereto, of the emblem or of the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes;

"(b) By reason of the homage rendered to Switzerland as a result of the adoption of the inverted Federal colors, to prevent the use, by private persons or by organizations, of the arms of the Swiss Confederation or of signs constituting an imitation thereof, whether as trade-marks, commercial labels, or portions thereof, or in any way contrary to commercial ethics, or under conditions wounding Swiss national pride.

"The prohibition mentioned in subparagraph (a) of the use of signs or designations constituting an imitation of the emblem or designation of the *Red Cross* or *Geneva Cross*, as well as the prohibition mentioned in subparagraph (b) of the use of the arms of the Swiss Confederation or signs constituting an imitation thereof, shall take effect from the time set in each act of legislation and at the latest 5 years after this convention goes into effect. After such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions."

Other nations recognizing their treaty commitments have enacted laws to prevent the use of the name and emblem for commercial purposes. I am told that the extent to which the name and emblem is presently being used in the sale of varied products has grown out of all proportion to its commercial use in the period prior to the passage of the original act. The resulting confusion is today a source of increasing embarrassment and danger to the Medical Corps of our armed forces, in our relations with foreign countries, and to the far-flung activities of the American Red Cross.

I attach for your consideration a draft bill designed to amend the existing law in a manner which would enable us to discharge our conventional obligations and at the same time protect our medical and sanitary services and the American Red Cross. The bill was prepared in the Department of Justice and has the approval of the Attorney General and the chairman of the American National Red Cross. I also understand that it has the approval of the Surgeons General of the Army and the Navy.

Respectfully submitted,

SUMNER WELLES, *Acting Secretary of State.*

(Enclosure: Draft bill.)

DEPARTMENT OF STATE, April 1, 1942.

A BILL To implement article 28 of the Convention signed at Geneva on July 27, 1929, and proclaimed by the President on August 4, 1932 (47 Stat. 2074, 2092), by making it a criminal offense for any person to use the emblem and name of the Red Cross for commercial or other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Act entitled "An Act to incorporate the American National Red Cross," approved January 5, 1905 (33 Stat. 600), as amended (Act of June 23, 1910, 36 Stat. 604, U. S. Code, title 36, sec. 4), be, and it hereby is, further amended to read as follows:

"Sec. 4. That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as, or represent or pretend himself to be, a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored, in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States or America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words 'Red Cross' or 'Geneva Cross'

or any combination of these words: *Provided, however,* That any person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, may continue the use thereof for the same purpose and for the same class of goods for a period not exceeding one year after the date of the enactment of this Act. If any person, corporation, or association, or any member, director, officer, agent, representative, or employee thereof violates the provision of this section he shall be deemed guilty of a misdemeanor, and upon conviction in any federal court shall be liable to a fine of not more than five thousand dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense."

Also printed below is a letter from the Secretary of State to the Honorable Sol Bloom under date of May 23, 1942, with regard to this matter.

DEPARTMENT OF STATE,
Washington, May 23, 1942.

Hon. SOL BLOOM,
*Chairman, Committee on Foreign Affairs,
House of Representatives.*

MY DEAR MR. BLOOM: The following relates to the bill H. R. 6911, introduced by you on April 9, 1942, to implement article 28 of the convention signed at Geneva on July 27, 1929, by preventing the use of the Red Cross insignia for commercial purposes.

I understand that your committee has held extensive hearings on this bill, which naturally has encountered considerable opposition from people who have been using the Red Cross as a trade-mark on their products and in their establishments. It is not my purpose to review those hearings or to undertake to combat the arguments that have been advanced against the proposed measure, but rather to state from an unbiased point of view my understanding of our obligations under the convention.

The bill relates to paragraph (a) of article 28 of the convention. The article reads:

"The Governments of the High Contracting Parties whose legislation may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times:

"(a) To prevent the use by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or of the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes.

"(b) By reason of the homage rendered to Switzerland as a result of the adoption of the inverted Federal colors, to prevent the use, by private persons or by organizations, of the arms of the Swiss Confederation or of signs constituting an imitation thereof, whether as trade-marks, commercial labels, or portions thereof, or in any way contrary to commercial ethics, or under conditions wounding Swiss national pride.

"The prohibition mentioned in subparagraphs (a) of the use of signs or designations constituting an imitation of the emblem or designation of the Red Cross or Geneva Cross, as well as the prohibition mentioned in subparagraph (b) of the use of the arms of the Swiss Confederation or signs constituting an imitation thereof, shall take effect from the time set in each act of legislation and at the latest 5 years after this convention goes into effect. After such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions."

I understand that there has been discussion before the committee of the words "shall take or shall recommend to their legislatures" such measures as may be necessary to prevent the use of the Red Cross or Geneva Cross, etc. I think that you and I, as well as members of the committee, can readily appreciate why this obligation was placed in the alternative form, i. e., "shall take or shall recommend." It was realized that this convention, like many other international agreements, would require implementation. Some of the signatory governments might have been able to implement it by orders or decrees, but it was recognized that governments such as our own would be under the necessity of seeking the assistance of their respective legislative bodies. In such

cases the executive could only recommend legislation. The provision in this convention is not unique in this respect.

However, our obligation under the convention is not fulfilled merely by making a recommendation. I say this for the reason that the last paragraph of article 28 clearly shows that the prohibition against the use of the Red Cross or Geneva Cross "shall take effect * * * at the latest 5 years after this convention goes into effect." Herein lies our unqualified obligation to restrict the use of the Red Cross insignia to the purposes contemplated by the agreement.

Questions have also been raised at the hearings, I believe, as to why, if the convention contemplated an absolute prohibition, on the use of the emblem for commercial purposes, the executive branch of the Government did not earlier recommend legislation for this purpose. I shall not undertake to answer this question except by stating that, as you and I well know, it is not uncommon for administrative officials to allow matters of this sort to drift until there is some impelling reason for action.

At the time the act of January 5, 1905, was passed there was no provision in the convention under which we were then operating, namely, that of 1864, regarding the use of the Red Cross emblem for commercial purposes. Yet the Congress restricted the use of persons and corporations who were then lawfully entitled to use it. Later we became a party to the convention of 1906 containing restrictive provisions, and the Congress on June 23, 1910, passed an act confining the use of the emblem to persons, corporations, or associations which had used it for lawful purposes prior to January 5, 1905, but limiting the use to the "same purpose and for the same class of goods."

The convention of 1929 broadened the scope of the earlier convention in many particulars and incorporated article 28, which I have quoted above. There can be no doubt, it seems to me, as to our obligation under that article, and it is hardly worthy of us to rely upon what was done in 1910 as a fulfillment of this unqualified obligation. The fact that we failed in 1910 to enact adequate legislation is no excuse for our failure now to comply with our undertaking. The 32 years which have elapsed since the act of 1910 was passed have brought about many changes in world affairs. We are today in the midst of a struggle for human freedom and for the alleviation of the condition of oppressed peoples. We are in immediate need of the full benefits of the Red Cross convention, which has for its purpose the amelioration of human suffering and the condition of the sick and wounded on the field of battle. Commercial interests in many directions have been required to adjust themselves to the war needs of our country and to requirements for the preservation of our domestic institutions. It should be our purpose to surround the Red Cross, a symbol of missions of mercy, with every safeguard against uses likely to impair its effectiveness. None of us has any desire unreasonably to interfere with the legitimate commerce and trade of our people, but I think that all of us have a desire to foster and advance humanitarian endeavors. This is characteristic of our people. I have great doubt as to whether by confining the use of the Red Cross insignia to Red Cross purposes the general course of our commercial endeavors would be greatly affected, certainly not for long. Our business people are too ingenious to permit such a situation to develop. Moreover, I am disinclined to believe that any manufacturer would desire to hold on to a trade-mark if he felt that to do so would prejudice the common good. In my judgment, the common good can best be served by reserving for the exclusive use of the medical services of the Army and Navy and the Red Cross organizations an emblem which has been chosen as their symbol and which we, along with other governments, have by treaty undertaken to protect. I do not think that we should be less liberal in giving effect to these obligations than have other governments parties to the convention.

I am, therefore, hopeful and strongly recommend that the bill which you have under consideration shall be enacted into law.

Sincerely yours,

CORDELL HULL.

